



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,096	07/11/2003	Vladimir Hampl JR.	SMD-135	4956

22827 7590 11/23/2005

DORITY & MANNING, P.A.
POST OFFICE BOX 1449
GREENVILLE, SC 29602-1449

EXAMINER

MAYES, DIONNE WALLS

ART UNIT	PAPER NUMBER
----------	--------------

1731

DATE MAILED: 11/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/618,096

Applicant(s)

HAMPL ET AL.

Examiner

Dionne Walls Mayes

Art Unit

1731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-71 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-71 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-2, 4-11, 14-21, 23-35, 39-41, 45, 47-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewton (US. Pat. No. 2,003,690).

Lewton discloses nearly all that is recited in the claims since it teaches a tobacco product having a tobacco filler, which is obviously surrounded by a wrapper, wherein said tobacco filler has an additive, ferric- or ferrous-oxide (preferably in hydrated form), which serves to promote the full conversion/combustion of carbon monoxide upon smoking the tobacco product, which results in a 30% carbon monoxide reduction (See entire document).

Regarding claim 4, while there is no specific articulation regarding the particle size of the iron oxide additive, Lewton does state that the smaller the particle size, the more effective it is (page. 2, col. 2, lines 8-12). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to have arrived at the claimed particle size, after routine experimentation, to optimize the iron oxide particle size to yield the most effective results.

Regarding claim 5, the iron oxide can be added in an amount up to about 5% by weight.

Art Unit: 1731

Regarding claim 6, it follows that the carbon monoxide to tar ratio would obviously be reduced in the claimed amount due to the overall reduction of carbon monoxide.

Regarding claims 8-9, it is well-known that reconstituted tobacco is commonly found in smokable filler compositions as well as cigarette wrappers. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to have included reconstituted tobacco as a constituent in either the filler or the wrapper of the tobacco product.

Regarding claims 16-21, and 23-27, it follows that the tobacco product of Lewton would exhibit the claimed properties/parameters due to the presence of the iron oxide additive. Where the claimed and prior art product/apparatus is identical or substantially identical in structure or composition, a *prima facie* case of either anticipation or obviousness has been established. *In re Best*, 562 F.2d 1252, 1255, 195 USPQ 430,433 (CCPA 1977). In other words, when the structure recited in the reference is substantially identical to that of the claims, the claimed properties or functions are presumed to be inherent.

3. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lewton (US. Pat. No. 2,003,690) in view of Heskett et al (US. Pat. No. 3,621,851).

Lewton may not stated that its additive can comprise cobalt oxide; however, as evidenced by the Heskett et al disclosure, such component is known for its ability to oxidize carbon monoxide or carbon dioxide (see col. 11, lines 53-57).

Art Unit: 1731

4. Claims 1, 4-9, 12-13, 16-21, 23-26, 37-38 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hampl, Jr. (US. Pat. No. 6,823,872).

Hampl, Jr. discloses nearly all that is recited in the claimed since it teaches smoking articles having reduced carbon monoxide delivery, less than 15 mg) which would obviously satisfy the claimed percentages/ratios. (see entire document)

Regarding claim 12, it would have been obvious to one having ordinary skill in the art at the time of the invention to have included a second, outer, wrapper in the smoking article of Hampl, Jr. since double wrap cigarettes are conventional in the art.

5. Claims 22, 36, 42-44, 49-56, and 58-70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hampl, Jr. (US. Pat. No. 6,823,872) in view of Hampl, Jr. (US. Pat. No. 4,739,775).

While Hampl, Jr. '872 may not disclose low permeability areas surrounding the tobacco in order to reduce ignition proclivity, Hampl, Jr. '775 teaches the addition of bands of paper material to wrappers for smoking articles in order to provide reduced ignition proclivity (see abstract and figs.). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the smoking product of Hampl, Jr. '872 to include the banded material disclosed in Hampl, Jr. '775 in order to appreciate the self-extinguishing benefits of the wrapper material.

6. Claims 57 and 71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewton (US. Pat. No. 2,003,690) in view of Hampl, Jr. (US. Pat. No. 4,739,775).

While Lewton may not disclose low permeability areas surrounding the tobacco in order to reduce ignition proclivity, Hampl, Jr. '775 teaches the addition of bands of

Art Unit: 1731

paper material to wrappers for smoking articles in order to provide reduced ignition proclivity(see abstract and figs.). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the smoking product of Lewton to include the banded material disclosed in Hampl, Jr. '775 in order to appreciate the self-extinguishing benefits of the wrapper material.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dionne Walls Mayes whose telephone number is (571) 272-1195. The examiner can normally be reached on Mon-Fri, 7AM - 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven P. Griffin can be reached on (571) 272-1189. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Dionne Walls Mayes
Primary Examiner
Art Unit 1731

Application/Control Number: 10/618,096
Art Unit: 1731

Page 6

November 18, 2005